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Company Ltd*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 11

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In re:

Case No. 18-23538 (RDD)

SEARS HOLDING CORPORATION, *et al.*,

(Jointly Administered)

Debtors.

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**HK SINO-THAI TRADING COMPANY LTD'S LIMITED
OBJECTION AND RESERVATION OF RIGHTS WITH
RESPECT TO NOTICE REGARDING THIRD DISTRIBUTION
PURSUANT TO ADMINISTRATIVE EXPENSE CLAIMS
CONSENT PROGRAM [Related Doc. 9630]**

HK Sino-Thai Trading Company Ltd (“**HK Sino-Thai**”), by its attorneys, hereby files this Limited Objection and Reservation of Rights regarding the Debtor’s Notice Regarding Third Distribution Pursuant to Administrative Expense Claims Consent Program (the “**Notice**”) (Doc. 9630), stating to the Court as follows:

1. HK Sino-Thai is the holder of an allowed administrative claim in the amount of \$318,718.62 (Claim No. 1060) (“**HK Administrative Claim**”),¹ and is a non-opt out administrative creditor with respect to the Debtors’ Administrative Claims Consent Program.

2. According to Exhibit “C” to the Notice, the Debtors have incorrectly listed the HK

¹ While the Debtor filed an objection to the HK Administrative Claim, as part of the Debtors’ 10th Omnibus Claim Objections, based on the “*World Imports*” issue, on November 20, 2020, the Debtors filed a *Notice of Withdrawal Regarding Debtors’ Tenth Omnibus Objection to Proofs of Claim* [Doc 9114], withdrawing its objection to the HK Administrative Claim.

Administrative Claim in the sum of \$148,718.62, and also listed such administrative claim as a disputed claim, whereby the Debtors intend to reserve a total of \$53,632.94 on account of such claim and not distribute such funds to HK Sino-Thai, presumably because the Debtors have filed an adversary proceeding against HK Sino-Thai seeking to avoid certain pre-petition transfers as preferential transfers. Adv. Pro. No. 20-06519-RDD. HK Sino-Thai has filed an answer disputing any liability.

3. First, HK Sino-Thai objects to the amount of the reserve for the HK Sino-Thai Administrative Claim, and requests that the Debtors increase the reserve to \$115,057.42, based on the 36.1% total distributions to “Settled Administrative Expense Claims” set forth in the Notice.

4. Second, HK Sino-Thai reserves all of its rights with respect to the Debtors’ reserve for the HK Sino-Thai Administrative Claim. The Debtors have not articulated any legal basis for such a reserve, and such a reserve is not permissible in light of the Second Circuit decision in *ASM Capital, L.P. v. Ames Dept. Stores, Inc. (In re Ames Dept. Stores, Inc.)*, 582 F.3d 422 (2d Cir. 2009). If the Debtors cannot articulate a permissible legal basis for its reserve on account of the “disputed” HK Sino-Thai Administrative Claim, HK Sino-Thai intends to file a motion with this Court for an order directing the Debtors to remit payment of these reserve funds to HK Sino-Thai Trading.

Dated: New York, New York
July 26, 2021

DAVIDOFF HUTCHER & CITRON LLP

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